Collector of Central Excise Vs. Drop Forging (India)

Collector of Central Excise Vs. Drop Forging (India)

SooperKanoon Citation : sooperkanoon.com/13425

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-1998

Reported in : (1999)(108)ELT174TriDel

Appellant : Collector of Central Excise

Respondent : Drop Forging (India)

Judgement :

1. This is an appeal filed by the Revenue against the order of Collector of Central Excise (Bombay) dated 22-8-1990. The issue is whether forgings manufactured by the process of drop hammer are classified under Chapter sub-heading 7308.00 (structures...of iron and steel) or under Chapter sub-heading 7208.00 (flat-rolled products of iron or non-alloy steel...).

2. When the matter was called none was present for the respondents despite notice. Since the appeal has been filed by the Department, it was decided to proceed with the matter on hearing the Departmental Representative.

3. Shri A.K. Agarwal, ld. SDR, narrated the facts leading to the present appeal. Respondents had filed classification list bearing No.64/87 and had classified their forgings under sub-heading 7208.00 in respect of steel forgings and under sub-heading 7413.00 in respect of brass forgings. In the classification list the respondents had described the forgings as-"forgings with rough appearance and large diamentional tolerance".

4. Department issued a SCN asking the respondents to show as to why steel forged products manufactured by them should not be classified under sub-heading 7308.00 and duty should not be demanded for two periods between, September, 1987 and February, 1988. By order-in-original dated 27-7-1988 Assistant Collector modified the classification of steel forgings under Chapter sub-heading 7308.00 as "other articles of iron and steel" at the rate of 15% and confirmed the demand. In order-in-appeal Collector (Appeals) set-aside the Assistant Collector's order and directed him to conduct proper investigations before determining the classification. Pursuant thereto Assistant Collector by his order-in-original dated 7-5-1990 modified the classification list No. 64/87 and classified the steel forgings under 7308..00 and also confirmed the demands for the two periods. Against the said order the present respondents filed the appeal before the Collector (Appeals) and in the order-in-appeal dated 22-8-1990 be set aside the order-in-original dated 7-5-1990 and allowed the appeal of the assessee and held that the items under dispute are correctly classifiable under sub-heading 7208.00. The present appeal of the Department is against the said order-in-appeal.

5. Ld. SDR referred to the grounds of appeal and stated that the Collector (Appeals) had placed reliance on Departmental Circular No.26/89, dated 18-9-1989. Ld. SDR submitted that this Circular, is applicable to, "roughly shaped pieces of forgings" and in the case of forged products manufactured by the respondents the said Circular was not applicable inasmuch as the products manufactured by the respondents were made as per specifications and drawings of the customers and the said products, were in the shape of "final articles or iron and steel" and were having more dimension than the final product. As such, these products could not be called "roughly shaped pieces". Further, the products have the essential characteristics of finished products and were more appropriately classifiable under sub-heading 7308.00. He relied on the Tribunal decision in Nag Bhushan Enterprises v. C.C.E.-1989 (44) E.L.T. 507 in which it was held that goods manufactured to the specifications of purchasers and as per drawings are to be treated as 'component parts of machinery not elsewhere specified' and would fall under erstwhile Tariff Item 68 and not under Tariff Item 52.

6. We have considered the submissions and also gone through the cross-objections filed by the Respondents. In the cross-objections it has been contended that the Assistant Collector's order was arbitrary and without application of mind and without giving reasonable opportunity of being heard. Respondents contend that the observations of the Assistant Collector that forged articles of rough form have definite shape of the final articles of iron and steel was unjustified since such forgings cannot be used as final products and do not bear the essential and functional characteristic of final machine parts.

Further, the Assistant Collector's interpretation that the description "pieces roughly shaped" under 7208.00 would be relatable only to resultant pieces of hot steel bar which is rolled or forged a number of times and out of which any further thing can be manufactured and does not refer to forgings of definite shape as manufactured by the respondents was a gross misconception of the specific description provided under the Tariff. On the other hand, the forging process followed by the applicant did not result in any product being finally shaped so as to be considered a finished article of iron and steel.

Respondents have further contended that the order of the Collector (Appeals) dated 7-5-1990 as well as Circular No. 25/89 had explicitly and categorically accepted this position. They, therefore, contended that the forged steel products manufactured by them would be classifiable only under Heading 7208.

7. We observe from the records that in the impugned order Collector (Appeals) has relied on the Board Circular No. 25/88 and observed that the Assistant Collector had failed to properly interpret the Board's Circular dated 25-8-1988. The Board Circular had clarified that in view of the Hon'ble Apex Court decision in TISCO v. Union of India, 1988 (35) E.L.T. 605 and the Gujarat High Court judgment in Eschjay Industries v. Union of India, which held against recourse to Explanatory Notes so long as entries were not aligned with the HSN. The said broad ratio of both the decisions on castings would be applicable to the classification of forgings so long as the entries were not aligned to HSN. The Board had further explained that Chapters 72 and 73 of Central Excise Tariff prior to 1-3-1988 are to be interpreted in accordance with established practice and trade

understanding. Since Central Excise Tariff prior to 1-3-1988 were not fully aligned with HSN, the Board's clarification meant that the entries are to be interpreted in accordance with the established practice and trade understanding. In view of this Collector (Appeals) had held that the forgings manufactured by the respondents would be covered by 7208.

8. The Department's present appeal has relied on the Tribunal decision in Nag Bhushan Industries v. C.C.E., supra, in which it was held that goods manufactured on specifications of purchasers are to be treated as component parts of machinery and would fall under erstwhile T.I. 68. It has been contended that the said ratio would be applicable in the instant case. We are unable to agree with the said contention in view of the Board's Circular No. 25/89 in which it has been clarified that forgings which had been subject to processes upto and including the stage of proof-machining were to be regarded as pieces 'roughly shaped' under Old Tariff Item 25 and under Chapter sub-heading 7208. It is the settled legal position that the Department cannot take a view different from the relevant Circular issued by the Board.

9. In view of the above, we do not find any warrant for interfering with the findings of the impugned order of Collector (Appeals). The said order is accordingly confirmed and the Departmental appeal rejected as being unsubstantiated. Cross-objection filed by the Respondents herein is also disposed of in view of the above.